L. H. DODGION
Administrator

Administration:
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Air Quality
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Director

Fax (702) 885-0868
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Waste Management
Corrective Actions
Federal Facilities

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF ENVIRONMENTAL PROTECTION

Capitol Complex
333 W. Nye Lane
Carson City, Nevada 89710

June 17, 1994

Mikey Lawler
Eticam
2095 Newlands Drive East
Fernley, Nevada 89408

Re: Eticam Metal Sludge "Product"

Dear Mr. Lawler:

The Nevada Division of Environmental Protection (NDEP) determined in the past that the sludge generated at the Eticam facility may be classified as a product material destined for reclamation. As such, the sludge would not be classified as a hazardous waste. The letters dated June 23, 1988, and September 10, 1990, list the records that Eticam must keep and/or submit to NDEP and actions that must be taken by Eticam in order to retain the product status. The NDEP letter dated May 17, 1991, reaffirms the requirements Eticam must meet to retain the product status.

NDEP has previously indicated to you that the Environmental Protection Agency Region 9 has raised concerns over the appropriateness of the NDEP letters. They argue that the appropriate mechanism to determine whether this material is a hazardous waste is through the variance process outlined in 40 CFR 260.30, 260.31, and 260.33.

Accordingly, Eticam is directed to submit a variance request under NAC 444.8632, 40 CFR 260.30(c) and 260.31(c) for all the sludge generated. The variance request is due July 30, 1994. The variance request should address each type of metal recovered, and include information as outlined in the January 4, 1985 Federal Register pages 638 and 655 attached, the EPA memorandum attached, and the NDEP letters attached.

During the last state quarterly inspection on June 13, 1994, it was agreed that Eticam will provide a summary of information quarterly, which will include 1) manifest number, 2) contract or lot number (to be able to cross reference with receipts from smelter), 3) total amount shipped

(weight), 4) smelter name and date received, 5) treatment date and name of smelter where the material was treated and 6) amount (weight) and type of metal(s) recovered at the smelter. It was agreed that the rest of the information required by the attached NDEP letters would remain onsite. This summary of information and the information kept on site is the type of information that Eticam should submit in order for NDEP to evaluate the variance request.

The information submitted should also include a list of the facilities that receive the Eticam sludge and a brief description of what each facility does with the sludge once received (i.e., is it stored prior to reclamation, how is it reclaimed, what industry buys the reclaimed metals). NDEP believes this information is relevant and necessary for making a decision on the variance request.

If you have any questions, please call Nancy Alvarez at 687-4670 ext. 3005.

Sincerely,

Jeffrey C. Denison
Supervisor
RCRA Facility Branch
Bureau of Waste Management

JCD:NLA:gf

Attachments

cc/enc: Nancy Alvarez, NDEP
Tony Terrell, EPA
Tim Sullivan, EPA

cc: Jolaine Johnson, NDEP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D C 20460

APR 26 1989

MEMORANDUM

SUBJECT: F006 Recycling

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste (OS-300)

TO: Hazardous Waste Management Division Directors
Regions I-X

It has come to the attention of EPA Headquarters that many of the Regions and authorized States are being requested to make determinations on the regulatory status of various recycling schemes for F006 electroplating sludges. In particular, companies have claimed that F006 waste is being recycled by being used as: (1) an ingredient in the manufacture of aggregate, (2) an ingredient in the manufacture of cement, and (3) feedstock for a metals recovery smelter. The same company may make such requests of more than one Region and/or State. Given the complexities of the regulations governing recycling vs. treatment and the definition of solid waste, and the possible ramifications of determinations made in one Region affecting another Region's determination, it is extremely important that such determinations are consistent and, where possible, coordinated.

Two issues are presented. The first issue is whether these activities are legitimate recycling, or rather just some form of treatment called "recycling" in an attempt to evade regulation. Second, assuming the activity is not sham recycling, the issue is whether the activity is a type of recycling that is subject to regulation under sections 261.2 and 261.6 or is it excluded from our authority.

With respect to the issue of whether the activity is sham recycling, this question involves assessing the intent of the owner or operator by evaluating circumstantial evidence, always

a difficult task. Basically, the determination rests on whether the secondary material is "commodity-like." The main environmental considerations are (1) whether the secondary material truly has value as a raw material/product (i.e., is it likely to be abandoned or mismanaged prior to reclamation rather than being reclaimed?) and (2) whether the recycling process (including ancillary storage) is likely to release hazardous constituents (or otherwise pose risks to human health and the environment) that are different from or greater than the processing of an analogous raw material/product. The attachment to this memorandum sets out relevant factors in more detail.

If the activity is not a sham, then the question is whether it is regulated. If F006 waste is used as an ingredient to produce aggregate, then such aggregate would remain a solid waste if used in a manner constituting disposal (e.g., road-base material) under sections 261.2(c)(1) and 261.2(e)(2)(i) or if it is accumulated speculatively under section 261.2(e)(2)(iii). Likewise, the F006 "ingredient" is subject to regulation from the point of generation to the point of recycling. The aggregate product is, however, entitled to the exemption under 40 CFR 266.20(b), as amended by the August 17, 1988, Land Disposal Restrictions for First Third Scheduled Wastes final rule (see 53 FR 31197 for further discussion). However, if the aggregate is not used on the land, then the materials used to produce it would not be solid wastes at all, and therefore neither those materials nor the aggregate would be regulated (see section 261.2(e)(1)(i)).

Likewise, cement manufacturing using F006 waste as an ingredient would yield a product that remains a solid waste if it is used in a manner constituting disposal, also subject to section 266.20(b). There is an additional question of whether the cement kiln dust remains subject to the Bevill exclusion. In order for the cement kiln dust to remain excluded from regulation, the owner or operator must demonstrate that the use of F006 waste has not significantly affected the character of the cement kiln dust (e.g., demonstrate that the use of F006 waste has not significantly increased the levels of Appendix VIII constituents in the cement kiln dust leachate). [NOTE: This issue will be addressed more fully in the upcoming supplemental proposal of the Boiler and Industrial Furnace rule, which is pending Federal Register publication.]

For F006 waste used as a feedstock in a metals recovery smelter, the Agency views this as a recovery process rather than use as an ingredient in an industrial process and, therefore, considers this to be a form of treatment that is not currently regulated (see sections 261.2(c) and 261.6(c)(1)). Furthermore, because this is a recovery process rather than a production process, the F006 waste remains a hazardous waste (and must be

managed as such prior to introduction to the process), and the slag from this process would normally be considered a "derived from" F006 waste. However, for primary smelters, the slag may be considered subject to the Bevill exclusion provided that the owner or operator can demonstrate that the use of F006 waste has not significantly affected the hazardous constituent content of the slag (i.e., make a demonstration similar to the one discussed above for the cement kiln dust). (NOTE: In the supplemental proposal of the Boiler and Industrial Furnace rule noted above, the Agency will be proposing a definition of "indigenous waste" based on a comparison of the constituents found in the waste to the constituents found in an analogous raw material. Should the F006 waste meet the definition of an "indigenous waste," the waste would cease to be a waste when introduced to the process and the slag would not be derived from a hazardous waste.)

Also, you should be aware that OSW is currently reevaluating the regulations concerning recycling activities, in conjunction with finalizing the January 8, 1988 proposal to amend the Definition of Solid Waste. While any major changes may depend on RCRA reauthorization, we are considering regulatory amendments or changes in regulatory interpretations that will encourage on-site recycling, while ensuring the protection of human health and the environment.

Headquarters is able to serve as a clearinghouse to help coordinate determinations on whether a specific case is "recycling" or "treatment" and will provide additional guidance and information, as requested. Ultimately, however, these determinations are made by the Regions and authorized States. Attached to this memorandum is a list of criteria that should be considered in evaluating the recycling scheme. Should you receive a request for such a determination, or should you have questions regarding the criteria used to evaluate a specific case, please contact Mitch Kidwell, of my staff, at FTS 475-8551.

Attachment

CRITERIA FOR EVALUATING WHETHER A WASTE IS BEING RECYCLED

The difference between recycling and treatment is sometimes difficult to distinguish. In some cases, one is trying to interpret intent from circumstantial evidence showing mixed motivation, always a difficult proposition. The potential for abuse is such that great care must be used when making a determination that a particular recycling activity is to go unregulated (i.e., it is one of those activities which is beyond the scope of our jurisdiction). In certain cases, there may be few clear-cut answers to the question of whether a specific activity is this type of excluded recycling (and, by extension, that a secondary material is not a waste, but rather a raw material or effective substitute); however, the following list of criteria may be useful in focusing the consideration of a specific activity. Here too, there may be no clear-cut answers but, taken as a whole, the answers to these questions should help draw the distinction between recycling and sham recycling or treatment.

(1) **Is the secondary material similar to an analogous raw material or product?**

- Does it contain Appendix VIII constituents not found in the analogous raw material/product (or at higher levels)?
- Does it exhibit hazardous characteristics that the analogous raw material/product would not?
- Does it contain levels of recoverable material similar to the analogous raw material/product?
- Is much more of the secondary material used as compared with the analogous raw material/product it replaces? Is only a nominal amount of it used?
- Is the seondary material as effective as the raw material or product it replaces?

(2) **What degree of processing is required to produce a finished product?**

- Can the secondary material be fed directly into the process (i.e., direct use) or is reclamation (or pretreatment) required?
- How much value does final reclamation add?

What is the value of the secondary material?

- Is it listed in industry news letters, trade journals, etc.?
- Does the secondary material have economic value comparable to the raw material that normally enters the process?

(4) **Is there a guaranteed market for the end product?**

- Is there a contract in place to purchase the "product" ostensibly produced from the hazardous secondary materials?
- If the type of recycling is reclamation, is the product used by the reclaimer? The generator? Is there a batch tolling agreement? (Note that since reclaimers are normally TSDFs, assuming they store before reclaiming, reclamation facilities present fewer possibilities of systemic abuse).
- Is the reclaimed product a recognized commodity? Are there industry-recognized quality specifications for the product?

(5) **Is the secondary material handled in a manner consistent with the raw material/product it replaces?**

- Is the secondary material stored on the land?
- Is the secondary material stored in a similar manner as the analogous raw material (i.e., to prevent loss)?
- Are adequate records regarding the recycling transactions kept?
- Do the companies involved have a history of mismanagement of hazardous wastes?

(6) **Other relevant factors.**

- What are the economics of the recycling process? Does most of the revenue come from charging generators for managing their wastes or from the sale of the product?
- Are the toxic constituents actually necessary (or of sufficient use) to the product or are they just "along for the ride."

These criteria are drawn from 53 FR at 522 (January 8, 1988); 52 FR at 17013 (May 6, 1987); and 50 FR at 638 (January 4, 1985).

reclaimed solvents are not contributing to the production process.[46] Finally, the reclamation and reuse must both be conducted by the same "person", although not necessarily at a single plant site. ("Person" is defined in § 260.10 and in RCRA as including among others, single corporations and other legal entities.)

[redacted]

The final variance from being a solid waste is for materials that have been reclaimed but must be reclaimed further before recovery is completed. We indicated in the proposal that reclamation processes are not completed until the end-product of the process is recovered, giving as an example, recovery of lead from spent batteries, which can require two operations—cracking and smelting—to be complete. 48 FR 14499 n.57. The material being reclaimed thus remains a waste until reclamation is finished.

We think this principle is generally sound, but that there may be some exceptions where the initial reclamation step is so substantial that the resulting material is more commodity-like than waste-like even though no end-product has been recovered. Possible examples are processes producing fluxes similar in composition to virgin ore concentrates. We consequently are allowing the Regional Administrator to grant a variance for materials that have been reclaimed, not completely recovered, but after initial reclamation are commodity-like in spite of having to be reclaimed further.

The criteria for making this decision are:

• [redacted] The more substantial the initial processing, the more likely the resulting material is to be commodity-like. Conversely, the more substantial the processing that is yet to occur, the less likely the initially-reclaimed material is to be commodity-like. For example, a spent solvent sent to an initial reclaimer who settles out debris and then sends the solvent to be distilled would not be eligible for this variance.

[redacted] Obviously, the more valuable a material is after initial processing, the more likely it is to be commodity-like.

• [redacted]

[redacted] If the initially-reclaimed material can substitute for a virgin material, for instance as feedstock to a primary process, it is more likely to be commodity-like.

• [redacted] If the applicant can show that there is an existing and guaranteed end market for the initially-reclaimed material (for instance, value, traditional usage or contractual arrangements), the material is more likely to be commodity-like.

• [redacted] The more carefully a material is handled, the more it is commodity-like.

• [redacted]

The Regional Administrator (or an authorized state) may weigh these factors as she sees fit, and may rely on any or all of them to reach a decision. In addition, the variance applies *only* to wastes after they have been initially reclaimed. Applicable regulatory requirements for the waste before initial reclamation are unaffected. The initial reclaimer will thus be a RCRA storage facility, and have to obtain a permit to store the wastes before reclaiming them. If a variance should be granted, however, the recovered material is not a waste and the subsequent reclaimer is not a RCRA facility.

3. *Variance to be Classified as a Boiler.* As discussed in I.B. of Part 2 of the preamble above, EPA also is adopting a variance provision to allow the Regional Administrator to classify certain enclosed flame combustion devices as boilers even though they do not otherwise meet the definition of boiler contained in § 260.10. See § 266.32. The Regional Administrator is to consider how nearly the unit meets the definition of boiler, considering:

• The extent to which the unit has provisions for recovering and exporting energy in the form of steam, heated fluids, or heated gases;

• The extent to which the combustion chamber and energy recovery equipment are of integral design;

• The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;

• The extent to which exported energy is utilized;

• The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

• Other factors, as appropriate.

4. *Procedures for Variances.* We are promulgating a new § 260.33 which contains procedures for granting or denying the four types of variances just described. In essence, an applicant must submit a written application to the appropriate EPA Regional Office (or authorized state). If a recycling transaction is conducted in more than one Region or state (i.e. the generator is in one region and the recycler is in another), the application should be submitted to the region or state in which the recycling activity occurs. The application should address the standard and criteria applicable to the particular variance, and state generally why grant of a variance is justified. The Regional Administrator will consider the application and will issue a written draft notice tentatively granting or denying the variance, and giving reasons for this action. (In many cases, an inspection probably is necessary to rule on an application.) Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the area where the recycling facility is located. The Regional Administrator will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. Any hearings will be nonadjudicatory. The Regional Administrator will issue a final decision after receipt of comments and after the hearing (if any), and this decision may not be appealed to the Administrator.

5. *Should EPA Adopt a Variance for Batch Tolling Agreements.* EPA proposed that hazardous wastes reclaimed pursuant to batch tolling agreements would be conditionally exempt from regulation. A batch tolling agreement is a contract between generator and reclaimer whereby a generator retains ownership of the waste, sends the waste to a reclaimer, and receives back the reclaimed portion. The proposal further specified that: (1) The generator had to send the wastes to a reclaimer within 180-days of generation, (2) the wastes had to be reclaimed and returned within 90 days of receipt by the reclaimer, and (3) the reclaimer could not commingle wastes being reclaimed under a batch tolling agreement with wastes of another generator. In addition, the reclaimer had to be paid according to the amount of reclaimed material returned to the generator, and paid more as the amount of material returned increased (*i.e.* the reclaimer would not be paid a flat fee regardless of the amount of reclaimed material returned).

As discussed above, EPA is not finalizing most of the proposed conditional exemptions because the risk of damage from spills and leaks

[46] The second example on p. 14488/2 of the proposal contained an erroneous implication in this regard.

represent exceptions to the general principle that accumulated hazardous secondary materials are hazardous wastes.

The final rule consequently states that secondary materials used as ingredients or used directly as commercial products are not wastes and so are outside the Agency's RCRA jurisdiction. They thus are not subject to RCRA Subtitle C regulations when generated, transported, or used (unless they are accumulated speculatively, as described earlier).

Most commenters agreed with the Agency on this point. Those who didn't felt that the Agency's jurisidiction over recycled secondary materials is unlimited. The Agency disagrees. Our RCRA authority over recycling of hazardous secondary materials is broad, but has some limits. The legislative history indicates that Congress rejected an approach that would have required modifying production processes in order to reduce the volume of hazardous waste generated. This is because such restrictions "i(n) many instances would amount to interference with the productive (sic) process itself. . . ." H.R. Rep. No. 94-1491, 94th Cong. 2d Sess. at 26. The Agency accordingly has interpreted its jurisdiction so as to avoid regulating secondary materials recycled in ways that most closely resemble normal production processes. These types of recycling are use of secondary materials as ingredients or as direct commercial product substitutes, or (as explained below) use in a closed-loop type of production process.[36]

b. Redrafting of the Exclusion in the Final Rule. In the proposal, exclusions for using and reusing materials directly took the form of exceptions to the definition of reclamation (proposed § 261.2(c)(1)(i)–(iii)). We have redrafted the final regulation so that § 261.2(e)(1) indicates explicitly which secondary materials used/reused in particular ways are not solid wastes. A definition of "use"/"reuse" appears in § 261.1(c). Exceptions to this principal are found in § 261.2(e)(2), and restate the situations where recycling might be considered to involve a use (or a closed-loop recycling situation, explained in the next section), but nevertheless constitutes waste management.

As noted above, there are several such use/reuse circumstances where the nature of the material or the nature of the recycling activity indicates that RCRA jurisdiction exists:

- where the material being used is inherently waste-like;
- where insufficient amounts of the material are recycled;
- where the material is incorporated into a product that is used in a manner constituting disposal or where the material is used directly in a manner constituting disposal; and
- where the material is used by being incorporated into a fuel, or being burned directly as a fuel.

In addition, when a component of the material is recovered as an end product, the material is being reclaimed, not used.

c. Guidance on Sham Situations. Other commenters voiced concern that these exclusions open opportunities for sham recyclers to claim that they are using secondary materials, and so not engaging in waste management. The Agency shares these concerns, and wishes to take this opportunity to indicate some of those situations (which also were pointed out in comments) we regard as shams.

First, where a secondary material is ineffective or only marginally effective for the claimed use, the activity is not recycling but surrogate disposal. An example (provided in comments) is use of certain heavy metal sludges in concrete. The sludges did not contribute any significant element to the concrete's properties, and so we would not regard this activity as legitimate recycling.

A second example of sham use occurs when secondary materials are used in excess of the amount necessary for operating a process. Examples are when secondary materials which contain chlorine are used as ingredients in a process requiring chlorine but are used in excess of the chlorine levels required. An indication that secondary materials are *not* being used in excess is if the recycler requires product specifications on incoming secondary materials, and these specifications are in accord with those generally in use in the industry.

Another indication that a claimed recycling use is a sham is if the secondary material is not as effective as what it is replacing. Conversely, where the secondary material is as effective as the alternative virgin material, the activity is much more likely to be considered legitimate recycling. Spent pickle liquor, for example, is known to be as effective as virgin materials when used as a phosphorous precipitant in wastewater treatment. See 46 FR 44970 (September 8, 1981). This reuse is legitimate. A secondary material considerably less effective, however, could well be viewed as not being used legitimately.

Absence of records regarding the recycling transaction is another indication of a sham situation. Records ordinarily are kept documenting use of raw materials and products. Records likewise are usually retained to document secondary material use and reuse. The Agency consequently views with skepticism situations where secondary materials are ostensibly used and reused but the generator or recycler is unable to document how, where, and in what volumes the materials are being used and reused. The absence of such records in these situations consequently is evidence of sham recycling.

A final indication of sham use is if the secondary materials are not handled in a manner consistent with their use as raw materials or commercial product substitutes. Thus, if secondary materials are stored or handled in a manner that does not guard against significant economic loss (*i.e.*, the secondary materials are stored in leaking surface impoundments, or are lost through fires or explosions), there is a strong suggestion that the activity is not legitimate recycling.

A recurring type of situation posing the potential for sham use involves using corrosive wastes as neutralizing agents. The potential for disposal in these situations is high since a waste acid can be dumped into (or onto) other materials, and any resulting change in pH would be incidental to the disposal purpose of the transaction. Accordingly, EPA will not accept a claim that a corrosive secondary material is being used as a substitute for virgin acid or caustic unless indicia of legitimate recycling are present. These include that the secondary acid or caustic meet relevant commercial specifications, that they be as effective as the virgin material for which they substitute, that they be used under controlled conditions, and that in a two-party transaction there be consideration (usually monetary) for use of the material. In addition, the more contaminated the acid or caustic is in relation to virgin material, the less likely the Agency is to view its application as legitimate recycling.

We note also that persons claiming that they are recycling hazardous wastes in a manner excluded by the regulation have the burden of proof that are within the terms of the exclusion. See Section J. below.

Finally, persons intending to use secondary materials that are not listed in the Chemical Substance Inventory compiled by EPA pursuant to Section

[36] We note, in response to comments, that the materials excluded from the RCRA definition still can be hazardous materials for purposes of Department of Transportation regulations governing the transportation of hazardous materials.

Administration 702/885-4670
Air Quality 885-5065
Construction Grants 885-5870

STATE OF NEVADA

Groundwater 702/885-4670
Waste Management 885-4670
Water Pollution 885-4670

WORKING

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF ENVIRONMENTAL PROTECTION
201 South Fall Street
Carson City, Nevada 89710

June 23, 1988

Richard T. Fox
President
ETICAM America, Inc.
25 Graystone Street
Warwick, Rhode Island 02886

Dear Mr. Fox:

The Division of Environmental Protection has completed its review of the submittal provided by Ray Reott of Jenner and Block dated May 16, 1988 regarding the disposition of the sludge generated at the Fernley, Nevada facility.

Based upon this review and that of the submittal by ETICAM on January 20, 1988, it has been determined that the sludge may be classified as a product material destined for reclamation, rather than a material destined for disposal. As such, the sludge is not classified as a hazardous waste.

As a result of this determination, the Division requests that ETICAM maintain documentation of the quantity of sludge produced and its corresponding assay to verify that the material contains economically recoverable amounts of the various constituents in the sludge. In addition, it is requested that the documentation contain the quantity of metals recovered by the smelter from each shipment of sludge.

Should you have any questions concerning this matter, please contact me.

Sincerely,

Thomas J. Fronapfel

Thomas J. Fronapfel, P.E.
Environmental Engineer
Waste Management Section

TJF:3

cc: Lew Dodgion
Verne Rosse
Byron Bradd
Ray Reott
Doug Martin
Kim Savage
Nahid Zoueshtiagh

BOB MILLER, *Governor*

STATE OF NEVADA

Administration (702) 687-4670
Air Quality 687-5065
Mining Regulation and Reclamation 687-4670
Waste Management (702) 687-5872

Water Permits and Compliance 687-4670
Water Quality Planning 687-4670
Wastewater Treatment Services 687-5870

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
123 W. Nye Lane
Carson City, Nevada 89710

September 10, 1990

Byron Bradd, P.E.
Plant Manager
ETICAM, Inc.
P.O. Box 1075
Fernley, NV 89408

Dear Mr. Bradd:

Based on our meeting of September 7, 1990, the Division is rescinding its August 22, 1990 letter and reinstituting its June 23, 1988 letter, regarding the Division's determination that sludge generated at the ETICAM, Fernley facility may be classified as a product material destined for reclamation.

In addition to the conditions of the June 23, 1988 letter, ETICAM shall provide to the Division within a reasonable time for each shipment of product the following information:

1. Notice of the shipment and to what facility it was sent for further reclamation.

2. Documentation required by 40 CFR 261.2 (f):

    a. Demonstrate that there is a known market or disposition for the material and that you meet the terms of the exclusion or exemption.

    b. Provide appropriate documentation to demonstrate that the material is not a waste or is exempt from regulation. (A letter from the receiving facility that the material is used as an ore or other product.)

    c. If appropriate, show that you have the necessary equipment to do the reclamation.

Another provision of the Federal regulations (40 CFR 261.1, (c), 8) requires that records be kept to show that 75% of the material be shipped off site or recycled. These records must be

submitted annually.

Finally, to the best of ETICAM's ability, you must determine at the time of shipment that the material is being transported to a facility that actually is capable of recovering the value to the material.

If you have any questions, please contact me.

Sincerely,

Verne Rosse

Verne Rosse, P.E.
Chief
Waste Management Bureau

cc:
Lew Dodgion
Dave Wilma
Dan Gross
Alene Coulson

PETER G. MORROS
Director

STATE OF NEVADA
BOB MILLER
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L. H. DODGION
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FAX	885-0868

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF ENVIRONMENTAL PROTECTION

123 W. Nye Lane

Carson City, Nevada 89710

May 17, 1991

Byron B. Bradd, P.E.
General Manager
ETICAM
2095 Newlands Drive, East
Fernley, Nevada 89408

RE: Metal Products Shipment Report

Dear Mr. Bradd:

I have reviewed your letter of May 13, 1991 which provided information on the amount of product which you have shipped and the amount presently stored on site. The overall format is acceptable. However, the following additional information will be required for the time period covered by your letter and for future reports.

Two letters from this office have described the information which you must maintain. Please refer to our correspondence dated June 23, 1988 and September 10, 1990. The first letter requires documentation of the quantity of sludge produced, its corresponding assay and the quantity of metals recovered by the smelter. Your letter did not provide the assay information or the quantity of metals recovered by the smelter. Please provide this summarized information in both your annual and post-shipment reports.

The September 10, 1990 letter required the following for each shipment of product:

1. Notice of the shipment and to what facility it was sent for further reclamation.

2. Documentation demonstrating that there is a known market or disposition for the material and that you meet the terms of an exclusion or exemption (see 40 CFR 261.2(f).

3. Documentation that the material is not a waste or is exempt from regulation (i.e. a letter from the receiving facility that the material is used as an ore or other product).

4. Show that you or the reclamation facility have the necessary equipment to do the reclamation (e.g. provide documentation that Cyprus Miami Mining has a smelter).

This letter also required you to keep records demonstrating that 75% of the material is transferred to a different site for recycling or recycled (see 40 CFR 262.2(c)(8)) each calendar year. Note that this agency will require that the material actually be recycled in each year. Shipment to a broker or intermediary who does not actually perform the recycling will not be considered compliance with the requirements of 40 CFR 262.2(c)(8).

Your letter did not provide the documentation that the material was actually recycled. Please provide this (e.g. letters from the recycler certifying that certain quantities of material were received, the material was recycled, the amount of recovered metal and the amount paid to Eticam).

Lastly, the August 12, 1990 letter from G. Ahmad certified receipt of 14 containers with 996 drums. Your letter noted that 1.055 drums were shipped to Pakistan Chrome Mines limited in 1990. Please explain the discrepancy. In addition, this office will need certification from the facility which received the chromium material from Pakistan Chrome Mines that the material was recycled.

If you have any questions, please give me a call.

Sincerely,

Daniel P. Gross

Daniel P. Gross, P.E.
Supervisor, Facility Branch
Waste Management Bureau

cc: Verne Rosse
Paula Bisson, EPA Region IX